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TRADEMARK TRIAL AND
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

02 MAY -9 AM 8:23



Mid-City Bowling Lanes & Sports Palace, Inc.)
)
Petitioner)
)
v.)
)
Edwin C. Skufca)
)
_____) Registrant)

05-01-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #11

Cancellation No. 32,795

ANSWER & COUNTERCLAIM

BOX TTAB
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3515

Registrant, Edwin C. Skufca ("Skufca"), by and through its undersigned counsel, files its Answer to the Petition for Cancellation of Registration No. 2,418,711 for the mark MOONLIGHT ROCK & BOWL as follows:

1. Skufca is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1 of the Petition for Cancellation, and therefore denies the same.
2. Skufca admits that the Petition for Cancellation purports to have appended thereto copies of Registration Nos. 1,850,925 and 2,438,181, but denies that they are marked as exhibits or bear exhibit letters A, B or C. As to the remaining averments contained in paragraph 2 of the Petition for Cancellation, Skufca is without

[Handwritten signature]

knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

3. Skufca admits that the purported copy of Registration No. 1,850,925 appended to the Petition for Cancellation bears a registration date of August 23, 1994. Skufca denies all remaining averments contained in paragraph 3 of the Petition for Cancellation.

4. Skufca admits that Registration No. 2,418,711 is for bowling alley services, but denies the remaining averments contained in paragraph 4 of the Petition for Cancellation.

5. Skufca denies the averments contained in paragraph 5 of the Petition for Cancellation.

6. Skufca is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 6 of the Petition for Cancellation, and therefore denies the same.

7. Skufca denies the averments contained in paragraph 7 of the Petition for Cancellation.

8. Skufca denies the averments contained in paragraph 8 of the Petition for Cancellation.

9. Skufca denies the averments contained in paragraph 9 of the Petition for Cancellation.

10. Skufca denies the averments contained in paragraph 10 of the Petition for Cancellation.

AFFIRMATIVE DEFENSES

For its affirmative defenses to the Petition for Cancellation, Skufca pleads as follows:

1. Petitioner has failed to state a claim upon which relief can be granted.
2. Petitioner has abandoned its rights in the marks ROCK 'N' BOWL and ROCKIN' BOWL and any marks similar thereto.
3. ROCK 'N' BOWL, ROCKIN' BOWL, ROCK AND BOWL, ROCK & BOWL and all substantially phonetically similar designations have become descriptive and/or generic of combining bowling and rock musical entertainment.
4. Skufca has used the mark MOONLIGHT ROCK & BOWL since long prior to the acquisition of any rights in ROCK 'N' BOWL or ROCKIN' BOWL alleged by Petitioner.
5. Skufca's first use date, filing date and registration date for Registration No. 2,418,711 predate the corresponding first use date, filing date and registration date of Petitioner's Registration No. 2,438,181 for ROCKIN' BOWL.

COUNTERCLAIM

1. Edwin C. Skufca, a citizen of the United States having an address of 30449 Shaker Boulevard, Pepper Pike, Ohio 44124 ("Skufca") believes that he will be damaged by continued registration of the mark shown in Registration No. 1,850,925 for ROCK 'N' BOWL, and hereby counterclaims seeking cancellation of same.

2. Skufca has adopted and has continuously used the service mark MOONLIGHT ROCK & BOWL since at least as early as 1985 in association with bowling alley services.

3. Skufca owns Registration No. 2,418,711 for the service mark MOONLIGHT ROCK & BOWL for bowling alley services. A true copy of this registration is attached. The registration includes a disclaimer of the exclusive right to use "ROCK & BOWL" apart from the mark as shown.

4. ROCK 'N' BOWL is the common descriptive name of bowling alley services that involve musical entertainment. ROCK 'N' BOWL does not function to identify services and distinguish them from services offered by others.

5. A registration can be canceled at any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered. The wording "ROCK 'N' BOWL" has become the apt name for a type of bowling event that occurs at bowling alleys. The wording is commonly and generically used in describing bowling and rock music entertainment events that occur in numerous bowling alleys across the country.

6. A registration can be canceled at any time if the registered mark has been abandoned. Petitioner, Mid-City Bowling Lanes & Sports Palace, Inc. ("Mid-City") has abandoned the ROCK 'N' BOWL mark by failing to police its use throughout the country by innumerable third parties.

7. Skufca is likely to be damaged by the continued registration of ROCK 'N' BOWL since it will have the *prima facie* effect of impairing Skufca's right to use ROCK & BOWL descriptively.

WHEREFORE, Skufca prays that 1) the Petition to Cancel Registration No. 2,418,711 be dismissed; and 2) the counterclaim seeking cancellation of Registration No. 1,850,925 for the mark ROCK 'N' BOWL be sustained and that the registration be removed from the Principal Register on the basis that its generic and/or descriptive, and/or that the mark has been abandoned.

A duplicate copy of the Answer and Counterclaim and the fee required are enclosed herewith. If necessary, the Commissioner is hereby authorized to charge payment or credit any overpayment to Deposit Account No. 06-0308 for any additional fees required.

Respectfully submitted,

FAY, SHARPE, FAGAN
MINNICH & McKEE, LLP

Dated:

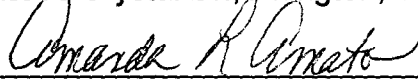
April 29, 2002


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Attorney for Registrant/Counterclaim Petitioner

CERTIFICATE OF MAILING

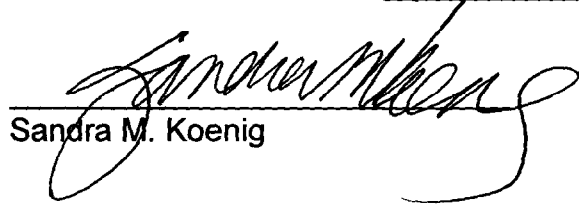
I hereby certify that this ANSWER & COUNTERCLAIM is being deposited in duplicate with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box TTAB FEE, Assistant Commissioner for Trademarks, 2906 Crystal Dr., Arlington, Virginia 22202-3513, on April 29, 2002.



Amanda L. Amato

CERTIFICATE OF SERVICE

I hereby certify that this ANSWER & COUNTERCLAIM is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Cary J. Deaton, 9696 Hayne Blvd., #M-1, New Orleans, Louisiana 70127-4719 on April 29, 2002.



Sandra M. Koenig

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,418,711

Registered Jan. 9, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

MOONLITE ROCK & BOWL

SKUFA, EDWIN C. (UNITED STATES CITIZEN)
30449 SHAKER BOULEVARD
PEPPER PIKE, OH 44124

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT
TO USE "ROCK & BOWL", APART FROM THE
MARK AS SHOWN.

FOR: BOWLING ALLEY SERVICES, IN CLASS 41
(U.S. CLS. 100, 101 AND 107).

SER. NO. 75-660,833, FILED 3-15-1999.

FIRST USE 0-0-1985; IN COMMERCE 0-0-1985.

LIZ KULICK, EXAMINING ATTORNEY